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More than one way to skim a tax bill, another case

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Most real estate taxpayers know to hire a tax certiorari attorney to reduce their taxes by commencing a tax certiorari proceeding. However, in addition to filing the tax certiorari proceeding, there are many aspects of the real property's taxation which can, and should, be examined to reduce real estate taxes. The following is a case study that highlights some of these items and illustrates the success that can be achieved as a result of a thorough job.

Recently, a new client contacted the firm regarding a warehouse building it built and owned in Nassau County. The client complained of high taxes and retained another firm to solve the problem. After several years of no relief, the client was finally advised that there was little chance of getting a reduction in their taxes. We agreed to take another look.

A thorough review of the assessment records revealed several interesting facts. The first was that for the first tax status date after the client's purchase, the county estimated the construction to be 80% complete and increased the assessment in an amount which reflected their estimate. Later, a review of the client's construction contract and the request for payments by the general contractor demonstrated that the county erred and construction was no more than 50% complete on the tax status date. Accordingly, when the case was finally resolved, a significant refund was obtained for the client's overpayment of taxes during the first tax year.

Second, we found that as the property was improved, and the assessment was increased, both the land and building assessments of the property were increased. While the increase in the building portion of the assessment was phased in pursuant to a business investment exemption, the increase in the land assessment was not. Pursuant to RPTL Section 1805, the increase in the land should have also been phased in over a five year period. The correction of this error resulted in a refund of the overpayment of taxes for the five year period.

Having reviewed the technical aspects of the assessment, it was time to review the valuation of the improved property. At first, it might appear that between the cost of the land and the building, the assessment was appropriate. However, a detailed review of the costs revealed that a significant amount had been spent on removable equipment, which was peculiar to the client's use and not part of the real estate. Furthermore, while the county might try to use the cost to defend its assessment, the cost approach to valuing real property is not appropriate in instances when the income approach can be utilized, and it could be utilized for this property.

The survey of the site showed a large warehouse with some parking on one side of the property and a large area of vacant land on the other side. I suspected that the county had valued the property as having a significant amount of excess land. However, a review of the approval process for the construction of the building revealed that several acres of the property were required to be land banked for parking. If a party proposing to build a building can demonstrate that their particular use of a building does not require all of the parking that the zoning code requires, as an alternative to seeking a variance, the owner can ask that they be allowed to land bank a certain amount of property for parking in the future, in the event it is needed. The area is not available as excess land which can be sold and/or developed with something else.

During the negotiations, our arguments for reductions were assisted by the information/documentation we had gathered in the review process. In the end, it resulted in a tax refund of approximately $620,000, plus interest. A far cry from the estimate of no refund that the client had obtained from the first firm it consulted with.

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